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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re M.M. et al., Persons Coming Under  
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

B.M.,

Defendant and Appellant.

E070992

(Super.Ct.No. INJ1800027)

OPINION

APPEAL from the Superior Court of Riverside County. Susanne S. Cho, Judge.

Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and  
Prabhath Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

B.M. (mother) appeals from juvenile court orders entered at an 18-month permanency and planning hearing. Inter alia, the court found mother had not made substantial progress in her case plan; terminated mother's reunification services; ordered the children at issue here, M.M. and R.B. (collectively, the boys), remain in their foster home and group home, respectively, with the goal of legal guardianship; and ordered that mother have continued unsupervised visits with the boys a minimum of once a month.

On appeal, mother argues: (1) substantial evidence does not support the court's finding that she did not make substantial progress in her case plan; (2) the court erred by not returning the boys to her and leaving them in their placement although no legal guardians had been identified yet; (3) the court erred by terminating her reunification services and not offering her an additional six months of services; and (4) the court erred by not mandating the boys visit with mother and participate in conjoint therapy. Counsel for respondent, Riverside County Department of Public Social Services (DPSS), argues mother forfeited her claims on appeal.

We conclude mother forfeited her challenge to the juvenile court's order adopting the social worker's recommended permanent plans for the boys because she submitted to and agreed with them, but we find no other forfeiture of mother's claims on appeal. We find substantial evidence supports the court's finding that mother failed to make substantial progress in her case plan and, under the circumstances of this case, the juvenile court had no authority to grant mother an additional six months of reunification services, including conjoint therapy. Finally, we disagree with mother that the juvenile court delegated to a third party the power to veto visits between mother and the boys or

that the court erred by failing to adopt a specific means of enforcing its visitation order when the boys refused to participate. Therefore, we affirm the orders.

## I.

### FACTS AND PROCEDURAL BACKGROUND

#### A. *Original Petitions and Detention Hearing.*

Social workers with the San Bernardino County Children and Family Services (CFS) responded to mother's home on December 2, 2016, when M.M. reported he had been beaten by J.M.<sup>1</sup> (stepfather) the night before. The social workers observed that the home was clean and M.M.'s brother, R.B., had no visible marks or bruises. When law enforcement arrived, they discovered a large "weed grow" and weapons in the garage. The brothers told the social worker they helped stepfather care for the marijuana plants. M.M. said the night before, stepfather had "kicked him on his back, lunged at him and kicked and hit him on the head" in mother's presence. On one occasion when stepfather hit M.M. with a belt, mother stated, "well, you shouldn't lie." M.M. said stepfather also hits R.B., and mother had used a belt on the back of M.M.'s bare legs. In addition, M.M. said stepfather and mother both smoked marijuana inside and outside the home, in their presence. When asked what he thought should happen next, M.M. said, "I don't want to come back" home.

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<sup>1</sup> J.M. is not a party to this appeal.

Stepfather denied that he hit M.M., and when his daughter Q.M.<sup>2</sup> (the boys' half sister) arrived home, he yelled to her, "this is all your brother's fault! They're trying to take you from me because of [him]." Mother denied she had ever witnessed stepfather hit M.M. However, she admitted she had spanked her children and pulled their pants down. When asked about the marijuana plants and if the boys had access to them, mother replied, "It's not my grow" and "I don't know how it's supposed to be locked up."

Stepfather was taken into custody for being a convicted felon in possession of a firearm, and mother was arrested for felony child endangerment because there were no locks on the door to the garage, and the boys had access to the marijuana plants and weapons inside.

When interviewed later at CFS's office, R.B. confirmed stepfather hit M.M., which resulted in physical injury. Q.M. said both of her parents hit her half brothers "a lot of times," especially when they would break things and lie. With respect to the marijuana grow, R.B. told the social worker that mother knew about the marijuana and, when the police arrived, she told him to move the plants. R.B. denied he had ever witnessed mother or stepfather use drugs or smoke.

In petitions filed with the San Bernardino County Juvenile Court, CFS alleged mother failed to protect the boys because: (1) she had a history of substance abuse; (2) she knew or reasonably should have known stepfather was growing marijuana in the family home; (3) she used inappropriate discipline on M.M., including hitting him with a

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<sup>2</sup> Q.M. is not the subject of this appeal.

belt; (4) she knew or reasonably should have known stepfather socked, punched, kicked, and hit M.M. with a belt and placed him at risk of serious harm or injury; and (5) she knew or reasonably should have known stepfather was using R.B. to help grow marijuana, which placed him at risk of serious harm or injury. CFS also alleged mother failed to provide for the boys' support because she was currently incarcerated. Therefore, CFS alleged the boys were dependent children within the meaning of Welfare and Institutions Code<sup>3</sup> section 300, subdivisions (b)(1) and (g).

At the continued detention hearing, the juvenile court found the boys were dependents within the meaning of section 300, detained them, and placed them in the care and custody of CFS. The court ordered supervised telephone contact for mother only. It also ordered mother to test for drugs that same day.

*B. Jurisdiction and Disposition Report.*

According to the jurisdiction and disposition report, mother denied the allegations in the petitions, claiming the boys' statements were "not true." She acknowledged the marijuana plants in her garage, explaining stepfather ran a nonprofit medical marijuana business. But she denied the boys helped tend to the plants. She admitted to smoking marijuana every night for pain management. She claimed the only weapon in the garage was a rifle registered to her, and she had since learned she was supposed to keep it in a locked safe because stepfather is a convicted felon. Mother denied stepfather used corporal punishment on the boys, asserting he was "the more lenient one" because he

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<sup>3</sup> All additional undesignated statutory references are to the Welfare and Institutions Code.

would lecture the boys about their behavior, whereas she would hit them “on the butt with her hand.” Otherwise, she professed to using no violent forms of discipline. Mother claimed she had been having trouble recently with M.M.’s attitude and behaviors. Prior to the boys being detained, she told M.M. she was going to put him in Job Corps. She believed “this is what has triggered him to say all this.” Mother admitted she and stepfather were sometimes harder on M.M. because he was the eldest child and “they want him to be a good example to his siblings.”

The social worker reported the boys were doing well in their placements. R.B. again confirmed he and his brother were physically disciplined by stepfather, and told the social worker that stepfather sold marijuana and crack cocaine out of the house. M.M. told the social worker the situation at home was “getting bad,” and stepfather had been hitting him “week after week and month after month, every few days, once or twice per week,” leaving marks on his body. M.M. confirmed mother’s knowledge of stepdad’s physical abuse. M.M. was afraid of stepfather but not of mother. M.M. told the social worker that stepfather had been growing marijuana in the family home since they moved to California four years earlier, and that he and R.B. helped take care of the plants. He denied seeing crack cocaine in the home, but he did see both mother and stepfather smoke marijuana in the house. When asked about relative placement, the boys were adamant they did not want to be placed with their older sister or with mother’s cousin. Q.M. confirmed stepfather’s physical abuse of the boys; she knew about the marijuana in the garage; and said stepfather told her, “don’t tell anybody, like my friend, [about the marijuana] because they don’t need to know.”

The social worker recommended the juvenile court find true the allegations in the petitions, remove the boys from mother's care, provide her with reunification services, and two-hour supervised visits once a week. The social worker opined the prognosis for reunification was "good to guarded." Although mother expressed her desire to reunify and complete required services, the social worker remained concerned about "mother's complete denial [of] the physical abuse allegations." The social worker anticipated reunification services would help mother learn better ways to protect and discipline her children. The social worker was also concerned about the marijuana growing operation in the home. Although mother said it was legal, the social worker expressed concern "that the parents use it as frequent[ly] as they do and that they use [it] in the home around their children as well as have them participate in the care of the plants," which demonstrated a lack of insight about how her lifestyle placed the boys at risk.

*C. Addendum Report and Amended Petitions.*

In an addendum report, the social worker reported the boys were doing well in their placements, but R.B. now wished to be placed with his older sister. Mother visited with all three children weekly. R.B. said he wanted to visit with stepfather, whom he considered to be his father, but M.M. said he did not want to visit with stepfather. M.M. believed mother favored R.B., and he felt "left out" because he was "having minimal interaction with his mother during visits." M.M. reported "many more incidents" of abuse, and the physical abuse went "way back from when he was four or five years old." He said he and R.B. "have gotten whipped, choked, socked in the face, eye, head, chest and kicked throughout their body." M.M. had reported the abuse to his middle school

counselor when the family lived in Utah, but nothing came of it. The family “moved around to avoid trouble.” M.M. had an older half brother who used to live with the family, but the half brother moved out to live with his biological father after stepfather beat him with a broom handle until he was bleeding.

M.M. said that, in addition to being hit, he was “forced to stand in the corner for hours, sometimes all day on Sunday and read the Bible.” Another punishment was being forced to sleep on the tile floor with nothing but shorts on and no blanket for cover. M.M.’s caretaker told the social worker that, although she had provided him with a bed, M.M. continued to sleep on the floor next to the bed and had been having nightmares. M.M. said that when he was 12 years old, stepfather made him lie down on the concrete while stepfather poured cold water on him. Stepfather also called M.M. names such as “bitch, pussy, coward, slave, Toby and all kinds of slave names.” Mother witnessed the abuse, but she told M.M. he “deserved it for lying.” M.M. also said they were required to ask for food. The prior Thanksgiving, stepfather accused M.M. of eating the leftovers and beat him as revenge. The next day, M.M.’s classmates noticed he had welts and bruises on his legs. M.M. told the social worker that his brother R.B. “got hit just as bad,” they were forced to hit each other, and they were never permitted to go on family outings because they always had chores to do and could not complete them in time.

CFS filed amended petitions to add the allegation that the boys were dependents within the meaning of section 300, subdivision (a), because stepfather inflicted serious physical harm on them, and within the meaning of section 300, subdivision (g), because stepfather failed to provide for their basic needs, such as food, clothing, and shelter. In



the accompanying detention report, CFS again recommend mother be given visitation once a week for two hours.

In an information packet filed March 10, 2017, CFS informed the juvenile court that M.M. had written a letter in which he stated he did not want to visit with stepfather and implied he did not wish to reunify with mother. CFS also submitted reports of interviews the “Children’s Assessment Center” conducted with the boys, during which both reported physical abuse by stepfather and failure to protect by mother.

In another information packet, the social worker reported she had spoken to mother’s therapist and learned “mother stopped coming to both parenting and counseling” sessions. The progress report from the therapist said mother was “active and attentive” during her therapy and parenting sessions, that she was “open to any and all interventions,” and she “was discussing her issues and making headway on acceptance and responsibility.” However, mother said she was “not willing to admit to things that are untrue,” and she missed three out of eight referred therapy sessions. The social worker reported stepfather’s counseling services were cancelled because he had refused to actively communicate and missed appointments.

*D. Contested Jurisdiction and Disposition Hearing.*

At the jurisdiction hearing, M.M. testified about the incident that resulted in the dependency. The night before the detention, he and R.B. were home doing their chores when stepfather told them they were not doing a good enough job and to sit in the corner while stepfather and mother went to the store. The two fell asleep. Later, Q.M. came into the den and woke them up. She told them stepfather and mother had called, they

were in the backyard, and they needed the gate opened. The boys went to open the gate. M.M. testified stepfather was not in the car. M.M. said stepfather walked over to R.B. and socked him in the chest four or five times with a closed fist. R.B. fell to the ground and started crying. Stepfather yelled at R.B., then walked up the porch toward M.M. M.M. tried to get away, but stepfather grabbed him, pushed him to the concrete floor, and hit him in the face, arms and chest. Stepfather punched M.M. in the face so hard that his head hit the floor. Stepfather then kicked and socked R.B. in the face and told the boys to grab groceries from the car and bring them inside. Mother was still in the passenger seat of the car when stepfather hit and kicked the boys. Stepfather yelled at the boys because they had fallen asleep in the corner. He then made them stand up facing the wall for an hour. Additional punishment included making the boys strip down to their underwear and stand in a bucket in the garage while he poured cold water on them. He also made them do jumping jacks.

M.M. said that the first time stepfather hit him was when he was about five years old, and the family was living in Las Vegas. Stepfather had told M.M. to clean the bathroom of their apartment. Thinking he had done a good job, M.M. went outside to play. But stepfather called him inside, showed him what he had done wrong, and hit him on the back with a belt. M.M. did not know if the belt left marks. When asked about the first time he remembered “having a mark from being hit with a belt,” M.M. testified he was in the fourth grade after the family had moved to California. Stepfather had gotten mad at him when he “messed up on [his] chores.” Stepfather told M.M. to go to his room. He pulled out a belt and hit M.M., which left marks up and down his arms and

legs. M.M. testified to other incidents of abuse, which left belt marks on his and R.B.'s bodies, left them bleeding, or resulted in a black eye. M.M. also witnessed stepfather savagely beat a half brother when the family lived in Las Vegas.

M.M. testified that, after the family moved to California, he was hit with a belt weekly. But he was hit with a belt less frequently once he started growing taller, about every two or three weeks. By the age of 15, he was no longer hit with belt. Stepfather had said hitting him with a belt "was useless" at that point, and he started slapping, punching, or throwing M.M. around instead. When stepfather would discipline M.M., mother would say, "It's your fault. You did this," or, "It's your fault that you did that, that's why you get hit with the belt or punched or slapped or you get punished." Mother was sometimes present when stepfather physically disciplined him, and she never intervened or said, "that's too much or stop or do something else."

Both stepfather and mother called M.M. names on a daily basis. "They called me a bitch, a pussy; they'll call me a slave. They call me worthless, useless, good for nothing; they called me Toby before." Stepfather and mother also used food as a form of discipline. "[T]hey would say we can eat a good dinner if we did our chores right, or if we did something good." If they did not do things right, the boys would be fed "bread or water or Top Ramen or something like that." There was a "three strikes system" in mother's home, under which the boys would receive a strike if they got in trouble or did not do their chores. After three strikes, they would not receive dinner or desserts, "or sometimes you get a whoopin.'" M.M. felt he was treated like a slave by stepfather and his mother. He did not consider stepfather to be his father, and he did not want to visit

with him. M.M. denied mother's claim that he reported the abuse because she said he had to go to Job Corps. M.M. testified Q.M. had a bed in her room "sometimes," but he and R.B. did not have beds. When asked if he was ever told why he and his brother did not have a bed or mattress, he said, "Because we didn't deserve a bed."

Stepfather grew marijuana plants in the bedroom and garage, and mother sometimes helped tend to them. Mother never provided M.M. with marijuana or smoked it herself in front of him, but he walked in on her and stepfather smoking marijuana in the garage. M.M. did not have a bedroom, and he had to sleep on the floor in the den or kitchen. He sometimes had a blanket and pillow.

M.M. no longer wanted to see mother, and he was happy without her. When asked if there was any change mother could make that would cause him to reconsider, M.M. said, "I'm done." When asked if things had changed since he had been removed from mother and stepfather's custody, M.M. said he was happy, not as quiet as before, and he had "more freedom to do stuff." M.M.'s foster family treated him "like one of their own," and they took the time to listen to what he had to say. M.M. said he still got punished when he was in trouble, "but I wouldn't get hit." M.M. testified that, since his placement in foster care, he could go to friends' houses, attend school dances, stay after school for basketball games, and participate in football. Although he testified he was happy in his foster home, M.M. had posted on social media that he had been feeling sad and depressed even after being placed in his foster home. Sometimes that had to do with girls and memories. He denied he smoked or had anything to do with marijuana.

After hearing arguments of counsel, the juvenile court found true the allegations in the amended petitions of serious physical harm by stepfather; found not true the allegation that mother had a history of substance abuse; found true the remaining allegations that mother failed to protect the boys; and found true the allegations that stepfather failed to provide the boys with provisions. The court therefore declared the boys dependents within the meaning of section 300, subdivisions (a), (b) and (g), ordered them removed from mother's care, and placed them in the care and custody of CFS.

The San Bernardino County Juvenile Court denied mother's request to transfer the case to Riverside County, where she had recently moved. The court ordered reunification services for mother, including anger management classes and drug testing, and weekly supervised visitation for two hours with the authority to liberalize as appropriate. Stepfather was only authorized to visit with Q.M.<sup>4</sup>

*E. Six-month Review Hearing.*

An amended case plan required mother to submit to random drug testing and complete a drug treatment program, if she tested positive.

A psychiatrist diagnosed M.M. with chronic posttraumatic stress disorder (PTSD), depressive disorder, and attention deficit hyperactive disorder (ADHD), and recommended psychotropic medication, including an antidepressant. The same psychiatrist diagnosed R.B. with ADHD, chronic PTSD, and oppositional defiant

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<sup>4</sup> Mother and stepfather timely appealed from the juvenile court's jurisdiction and disposition orders, but this court dismissed the appeal when their attorneys filed briefs indicating they had found no arguable issues. (*In re Q.M. et al.* (Sept. 25, 2017, E068391).)

disorder. He also recommended R.B. be given psychotropic medication. The juvenile court approved applications to treat the boys as recommended.

Mother again moved the San Bernardino County Juvenile Court to transfer the case to Riverside County, arguing it would be in the boys' best interests if she could complete her reunification services in her county of residence. The request was denied.

In a status review report, CFS reported mother only "minimally participated" in her reunification plan during the reporting period. She failed to make herself available to meet with the social worker and did not participate in outpatient treatment and random drug testing. Mother told the social worker she had not agreed to her case plan, and she would take her concerns to the juvenile court. The social worker had to instruct mother not to give Q.M. notes to pass to the boys during visits, and that mother should instead speak to the boys directly during in-person and telephonic visits. Mother became upset and said she disagreed with the social worker's direction.

Although mother had completed a 12-week parenting course and had attended individual therapy, the social worker opined she had not benefited from those services because she did not demonstrate appropriate parenting practices when communicating with the boys; she failed to acknowledge that the boys had been traumatized; she had been uncooperative in her case plan; and she had failed to address substance abuse issues. Mother was a "no-show" for eight random drug tests and had tested positive the one time she did test during the reporting period. Mother visited consistently with Q.M. but was inconsistent with visiting the boys. The boys refused visits with mother on many occasions because she brought stepfather with her. On other occasions, the boys reported

they had no interest in visiting with mother because she demonstrated a lack of insight into the abuse they had suffered.

The social worker also expressed concern about mother's potential substance abuse and indicated mother's failure to demonstrate substantial progress in her case plan placed the boys at substantial risk of continued physical abuse and neglect. The social worker continued to believe the boys were at risk and should not be returned to mother's care. Given mother's minimal progress and refusal to cooperate in her case plan, the social worker recommended the juvenile court terminate services.

M.M. had remained in the same foster home since his removal from mother's care, and R.B. had more recently been placed in a group home. R.B. was receiving wraparound services for his aggressive behaviors, and he had stabilized since his most recent placement. M.M. occasionally had negative behaviors and struggled with communication, but he was improving. The boys' foster family and group home continued to provide for their needs. Both boys expressed their unwillingness to return to mother's care because of her continued relationship and cohabitation with stepfather.

Before the case was called for the six-month review hearing, the parties agreed to continue reunification services for mother. The juvenile court found that mother's progress in her case plan had been minimal, but it ordered CFS to provide her with an additional six months of services. Mother's visitation was increased to twice a week for two hours, to be liberalized by CFS as appropriate.

*F. Twelve-month Status Review Hearing and Transfer to Riverside County.*

In a report for the 12-month review hearing, the social worker reported mother had only minimally participated in her reunification services during the reporting period, and she only sporadically appeared for random drug tests. Mother failed to appear for one test and tested positive for marijuana once. Mother attended individual counseling sessions during the reporting period. The therapist reported mother was making progress in addressing accountability, learning effective discipline techniques, and learning the importance of setting rules, boundaries, and routines for the boys. However, it appeared mother had not yet acknowledged or addressed her substance abuse issues. Mother switched counselors during the reporting period, and the social worker had not yet received a progress report from the new counselor. CFS offered mother drug treatment services in San Bernardino County, but she declined because they were too far from where she lived. CFS was in the process of planning for mother to complete her drug treatment in Riverside County. Because of mother's lack of cooperation, the social worker had not yet had the opportunity to assess mother's new residence.

Mother visited consistently with Q.M., and the supervising delegate reported the visits went well. Visits with the boys, however, had been inconsistent, "minimal and inadequate." While visiting with R.B., mother spent much of her time on her phone and had only minimal communication with the boy. She completely missed the last two scheduled visits during the reporting period. Mother's in-person visits with M.M. were also minimal. M.M. believed mother was only consistent with weekly phone visits on



Sundays because she wished to speak with R.B., and she had no interest in speaking with M.M. Both boys still expressed their desire not to be returned to mother's care and custody because of mother's continued relationship and cohabitation with stepfather, and they wished to remain in their placements. The social worker reported that R.B.'s wraparound services had not been successful in addressing his aggressive and antisocial behaviors, and he had been moved to a group home with children his own age. R.B. adjusted well to his new placement and demonstrated no worrisome behaviors. M.M. occasionally had negative behaviors and struggled with communication, but he demonstrated self-awareness and the ability to correct his behavior.

The social worker continued to express concern that mother's potential substance abuse and her failure to demonstrate meaningful progress in her case plan placed the boys at substantial risk of physical abuse and neglect. The social worker recommended the boys not be returned to mother's care and custody and, once again, recommended the juvenile court terminate her reunification services.

In an information update, the social worker indicated she had received a progress report from mother's new counselor. The report stated mother had attended two sessions and "appears to be [a] responsible, loving mother who understands that physical discipline is abuse." However, when the social worker spoke to the counselor, the counselor indicated she had seen mother three times and had "not discussed the physical abuse, boundaries, and issues of protection" with mother.

The social worker reported that mother continued to bring stepfather with her to visits with R.B., despite the juvenile court's order that he only visit with Q.M. The social

worker opined mother had engaged in a pattern of taking advantage of R.B.'s caregivers, who were not aware of "current worries," to coerce the boys into "believing there are no ongoing worries and/or risks to their well-being." In addition, mother discussed aspects of the case with the boys, again contrary to the juvenile court's orders. She told them stepfather had completed his services and had learned that physical discipline was inappropriate. The social worker opined mother had not benefited from her services because she continued to have difficulty demonstrating the capacity to protect the children. The social worker repeated the recommendation that mother's services be terminated.

As before, at the 12-month status review hearing, the parties agreed to continue reunification services for mother. Mother's attorney informed the juvenile court that mother had appeared for all drug tests during the reporting period, and the one "no-show test" resulted from there being no female personnel to observe the test. Mother was enrolled in an outpatient program and had attended about six counseling sessions. Mother's attorney asked the juvenile court to grant CFS authority to give mother unsupervised, overnight, and weekend visits. Minors' counsel indicated it was her understanding that two of the three children wished to eventually reunify with mother, so she agreed to continued reunification services.

The juvenile court found that mother's progress during the reporting period had been moderate. The court ordered CFS to provide mother with reunification services for an additional six months, ordered mother to have weekly visits for two hours, and granted

CFS authority to provide unsupervised, overnight, and weekend visits. The court also authorized stepfather to have supervised visits with R.B.

The next month, mother once more moved to transfer the case to the Riverside County Juvenile Court. This time, the request was granted. The Riverside County Juvenile Court accepted the transfer. Counsel for all three children (hereafter minors' counsel) informed the court that the boys did not wish to reunify with mother. The court ordered conjoint therapy between mother and the boys and directed the social worker to assess family members for possible relative placement.

*G. Interim Review Hearing.*

In an addendum report for an interim review hearing filed by DPSS, the social worker reported she was in the process of facilitating family therapy between mother and the boys, but M.M. had been resistant to family therapy. The boys told the social worker they did not want to be placed with their paternal aunt, and they would rather stay in their current placements. Mother's visits with M.M. were "somewhat sporadic" because of M.M.'s busy school and after school sports schedule. Her visits with R.B. were also sporadic. During the reporting period, mother had four unsupervised visits with M.M. M.M. expressed indifference about having supervised visits with stepfather. R.B. was opposed to having supervised visits with stepfather, but he wanted unsupervised visits with mother and was open to having longer visits with her. R.B. felt safe with mother but "only sometimes safe" with stepfather. As a result, the social worker authorized mother to have unsupervised visits with R.B. for four hours on Saturdays.

Mother told the social worker she had previously smoked marijuana to treat symptoms of irritable bowel syndrome. However, she had stopped smoking and had been participating in a substance abuse program as directed by the San Bernardino County Juvenile Court. Although she did not believe she had abused marijuana, mother participated in the program to remain “compliant” with her case plan. Mother’s latest progress report for drug treatment showed she had completed eight group sessions, but was a “no-show” for three, she had attended three individual sessions, and had received one positive and one negative drug test.

The social worker assessed mother’s residence. The home was clean, and there were separate rooms for Q.M. and R.B, which were furnished and decorated. Mother also explained that there was an extra mattress for M.M., but she had not yet prepared a room for him because he had expressed a desire to stay in foster care.

The social worker recommended mother receive family maintenance services for Q.M.; stepfather have supervised visits with the boys once a week for two hours, with DPSS having authority to liberalize and increase visits as appropriate; and mother have unsupervised, overnight, and weekend visits the boys.

At the interim review hearing, mother requested that all three children be returned to her care immediately, but she would accept M.M. staying in his current placement so he would not have to change schools. The juvenile court found mother had made substantial progress in her case plan, continued mother’s reunification services for the boys, and ordered family maintenance services for Q.M. The court authorized mother and stepfather to have frequent and liberal visits with both boys, including unsupervised,

overnight, and weekend visits.

*H. Eighteen-month Status Review Report.*

In a report for the 18-month status review hearing, the social worker reported R.B. had begun to participate in family therapy with mother. The social worker spoke to the family therapist, who said he would work with R.B. and mother to develop a safety plan in case stepfather physically abused R.B. When told mother had not yet acknowledged the boys had been physically abused, the therapist said mother had “made some acknowledgments” during sessions. R.B. no longer qualified to stay in his group home, and the social worker was working to find him a placement in a foster home. R.B. told the social worker he did not wish to be returned to his mother and stepfather’s care because he had not seen a change in their attitude and behavior. R.B. said he did not trust mother, and he had no feelings toward stepfather. He wanted no relationship with stepfather whatsoever.

R.B. agreed to participate in overnight visits in mother’s home, but he did not consider it to be “his home,” and he saw such visits as “just a sleepover.” R.B. wanted to be placed with M.M. in his foster home, but the foster mother said she did not have space and was concerned about R.B.’s continued behavioral issues. During the reporting period, R.B. had overnight visits with mother on Fridays. The first few visits went “ok,” but R.B. requested they be every other Friday, then requested the overnight visits be further reduced to one Friday a month. R.B. reported no major issues, but he said mother and stepfather “have not changed.” He believed mother was bipolar because her mood

changed from moment to moment, and she became angry or annoyed easily and took her frustration out on him by yelling.

M.M. declined to participate in family therapy. He wished to remain in his foster home and did not want to return to mother's care. M.M. told the social worker that he did not feel safe in mother's home, and if had to return, he would "runaway every day." M.M. did not believe mother had changed, and that the physical abuse would resume if he were returned to her care. During the reporting period, M.M. had been provided independent living program services with the goals of obtaining a California identification card and driver's license, learning how to manage his money, raising his grade point average, and preparing for college. M.M.'s foster mother told the social worker that M.M. said he did not trust mother during his visits, and he did not want to travel very far with her. M.M. told the social worker he had not visited with mother in a month, and he occasionally did not respond to mother's telephone calls and text messages because he felt she was not making much of an effort, especially since Q.M. had been returned to her. M.M. said he no longer wished to visit with mother because he was in a good environment, and he was involved in many activities. Whereas before M.M. was indifferent about visiting stepfather, he now told the social worker he had no desire to visit with him.

After her positive drug test during the previous reporting period, mother agreed to attend counseling for a few more weeks and drug test negatively before she could receive her certificate of completion. However, mother never returned to the program, and she was discharged. Mother told the social worker she thought she had, in fact, completed

her program and said her discharge was a result of a miscommunication. Mother agreed to continue attending her substance abuse program and complete drug tests. She appeared for one test during the reporting period and tested negative. Mother said she wanted the boys returned to her care and the dependency terminated. When informed that both boys said they did not want to be returned to mother, she accused CFS of bribing M.M. with offers of scholarships and participation in activities, so he would stay in foster care. Mother also said she believed the boys said they did not want to come home because CFS had unnecessarily medicated them.

Mother continued to deny the allegations of physical abuse that triggered the dependency in the first place and failed to take responsibility for her actions. The social worker opined mother had not benefited from her reunification services. DPSS recommended the juvenile court find mother had failed to make substantial progress in her case plan and, for the third time, the social worker recommended the juvenile court terminate reunification services for mother. The social worker also recommended the court order a permanent plan living arrangement (PPLA) for M.M. and another permanent plan arrangement (APPLA) for R.B. with the specific goals of guardianship, continue family maintenance services for Q.M., and continue to authorize unsupervised visits between mother and the boys including overnight and weekend visits

Mother filed with the juvenile court a letter from her family therapist. The therapist reported R.B. had deep resentment toward mother because of stepfather's abuse and because of mother and stepfather's dishonesty. The therapist reported mother had taken full responsibility for her actions during family therapy, and she asked R.B. for his



forgiveness and what she could do to restore his trust. R.B. said it would take time, but he was willing to work through his resentment. R.B. also expressed his concern that the abuse would resume if he were reunited with mother and stepfather. However, R.B. did not appear for his most recent session and indicated he had no interest in being reunited with mother and stepfather. Although the therapist reported R.B.'s concerns had merit, he opined the child should not have the option of opting out of family therapy.

Mother requested the juvenile court set a contested 18-month review hearing. Mother's attorney argued the letter from the therapist refuted the social worker's claim that mother had not taken responsibility for her actions. Mother also requested R.B. be returned to her. Counsel informed the court that mother had no problem with M.M. being placed in "transitional living," but she wanted the child moved because the "home that he is in is against her religion." Both mother's and stepfather's attorneys asked that Q.M.'s dependency be terminated.

Minors' counsel informed the juvenile court that mother and stepfather had prevented her investigator from interviewing Q.M., and she was of the opinion the parents had not fully completed their case plan. In addition, minors' counsel disputed the suggestion in the therapist's letter that mother had taken full responsibility for her actions. "Perhaps she is in the therapy sessions, but she certainly is not doing it outside of those sessions with the boys, not one iota. I have seen the text messages between her and [M.M.], and she continues to blame them, especially [M.M.]" R.B. told the attorney he did not feel safe in mother's home, and both boys were "adamant that they do not wish to reunify." Counsel informed the juvenile court that the San Bernardino County

Juvenile Court had found stepfather to be a nonparty with respect to the boys and denied him services or visits, and she said stepfather should not have unsupervised visits with them now. Both boys were thriving in their placements.

The juvenile court set a contested review hearing. With respect to visitation, the court noted, “[i]t gets more and more difficult as the children are older to enforce those visitation orders because the court is not involved in the business of forcing and dragging kids here and there to force visitation.” The court ordered mother’s unsupervised visits be conducted outside the home, without stepfather present. The court encouraged visits between mother and the boys, but said, “to the extent they don’t happen, I’m not sure what I can do about it.”

*I. Contested 18-month Status Review Hearing and Termination of Reunification Services.*

In an addendum report, the social worker reported she had spoken to R.B., and the child said he no longer wanted to visit with mother and under no circumstances did he want to visit with stepfather. R.B. also told the social worker he no longer wanted to participate in family therapy with mother because he was uncomfortable with the therapist. R.B. felt the therapist was “rushing through the issues that he and his mother have.” He was open to therapy with mother at a different location and with a new therapist. Mother did not agree with such a change. M.M. told the social worker he was willing to visit with mother once a month without stepfather being present.

The social worker continued to express the opinion that mother and stepfather had not benefited from their reunification services because they continued to deny the

allegations of physical abuse and had failed to take responsibility for their actions. Therefore, the social worker for the fourth time recommended the juvenile court find mother had failed to make substantive progress in her case plan; continue the boys' current placements; and terminate reunification services for mother. The social worker also recommended the court order PPLA and APPLA for the boys with the specific goal of legal guardianship; reduce mother's unsupervised visits with the boys to once a month; and, with respect to Q.M., continue providing family maintenance services to mother.

At the contested 18-month status review hearing, the juvenile court granted mother and stepfather's unopposed request to terminate the dependency with respect to Q.M. Mother's attorney informed the juvenile court that mother had submitted on and was "in agreement" with the social worker's recommendation of PPLA for M.M. With respect to R.B., mother's counsel told the court mother was "willing and able to take [R.B.] home," and she was "disheartened" to read in the reports that R.B. did not want to be returned to mother. However, she "will accept it." In addition, counsel said mother "does not have a problem with legal guardianship either." Counsel said mother's "only concern" had to do with R.B.'s placement. "[T]he child is in a group home, which he can't stay in forever. There is no legal guardian right now, and she does not want him to go where [M.M.] is because of the distance." Except for those concerns, counsel said mother reluctantly agreed with the plan for R.B. Mother requested unsupervised visits be continued.

Relevant here, the juvenile court found: DPSS provided mother with reasonable reunification services designed to alleviate the reasons for the dependency and facilitate reunification of the family; mother failed to regularly participate in her reunification

services and make substantive progress; and there was no reasonable probability M.M. and R.B. would be returned to mother if she were given an additional six months of services. The court therefore terminated reunification services. The court found there were compelling reasons not to set a hearing under section 366.26 to terminate parental rights because the boys were not adoptable, and no legal guardian had been identified for R.B. Therefore, the court ordered the boys remain out of the home with a permanent plan of legal guardianship.

With respect to visitation, the juvenile court ordered mother to have a minimum of one-hour unsupervised visits with both boys, out of the home, at least once a month. The court also authorized mother to bring Q.M. to the visits “so that sibling visitation can occur.” Finally, the court specifically ordered that stepfather have no visits with the boys.

Mother timely appealed.

## II.

### DISCUSSION

*A. Mother Forfeited Her Claims of Error About the Juvenile Court’s Placement Order and Adoption of the Recommended Plans for the Boys, but She Did Not Forfeit Her Remaining Claims of Error.*

Mother argues the record does not support the juvenile court’s finding that she failed to make substantial progress in her case plan, and she faults the court for terminating her reunification services and not offering additional services, leaving the boys in their current placements with no prospect of legal guardianship in the near future,

and for not mandating the boys visit with her and participate in conjoint therapy. In its brief, DPSS argues mother did not object to the court's on-the-record finding during the 18-month review hearing that she failed to make substantive progress or object to the order terminating reunification services. In addition, DPSS argues mother agreed with the visitation order, so she is barred from challenging it under the invited error doctrine. Mother responds she did not affirmatively waive her right to contest DPSS's recommendations, and she was not required to object below to preserve her challenge to the juvenile court's finding that she did not make substantial progress in her case plan.

Mother's challenge to the factual finding that she had not made substantial progress in her case plan is a claim of insufficiency of the evidence. (*V.C. v. Superior Court* (2010) 188 Cal.App.4th 521, 529.) "The general principle of forfeiture prohibits parties from addressing on appeal issues not raised at trial. However, the argument that a judgment is not supported by substantial evidence is an 'obvious exception to the rule.'" (*In re P.C.* (2006) 137 Cal.App.4th 279, 287-288, quoting *Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 23, fn. 17.) Therefore, without more, mother's failure to object to that finding did not result in forfeiture of her appellate claim of insufficient evidence.

DPSS's invited error argument clearly refers to mother's submission during the 18-month review hearing to some of the social worker's recommendations. "[T]he primary definition of submit is to yield to, to surrender or to acquiesce. [Citation.] In this regard, it is not uncommon in dependency proceedings for a parent to 'submit' on a social services report. [Citations.]" (*In re Richard K.* (1994) 25 Cal.App.4th 580, 588-

589.) But when it comes to determining whether a parent is precluded from raising an argument on appeal, the courts have distinguished between two types of submission—submission to the social worker’s report or submission to the social worker’s recommendation.

““By submitting on a particular report or record, the parent agrees to the court’s consideration of such information as the only evidence in the matter. Under such circumstances, the court will not consider any other evidence in deciding whether the allegations are true. [Citation.] [¶] Notwithstanding a submittal on a particular record, the court must nevertheless weigh evidence, make appropriate evidentiary findings and apply relevant law to determine whether the case has been proved. [Citation.] In other words, the parent acquiesces as to the state of the evidence yet preserves the right to challenge it as insufficient to support a particular legal conclusion.”” (*In re A.A.* (2016) 243 Cal.App.4th 1220, 1236, quoting *In re Richard K.*, *supra*, 25 Cal.App.4th at p. 589.)

When a parent submits on a social worker’s *recommendation*, however, he or she “acquiesce[s] in or yield[s] to the social worker’s recommended findings and orders.” (*In re Richard K.*, *supra*, 25 Cal.App.4th at p. 589; see *In re N.M.* (2011) 197 Cal.App.4th 159, 167 [when parent submits on social worker’s recommended finding and orders he or she “has acquiesced to the recommendation.”].) “Ordinarily, submitting ‘on a social worker’s recommendation dispels any challenge to and, in essence, endorses the court’s issuance of the recommended findings and orders.’” (*In re N.S.* (2002) 97 Cal.App.4th 167, 170, quoting *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 813.) In other words, ““when a parent submits on a social worker’s recommendation[,] . . . he or she

forfeit[s] the right to contest the juvenile court’s decision if it coincides with that recommendation.”” (*In re A.A.*, *supra*, 243 Cal.App.4th at p. 1236, quoting *In re T.V.* (2013) 217 Cal.App.4th 126, 136.)

At the contested 18-month review hearing, counsel for DPSS introduced the social worker’s reports without objection. Mother’s attorney did not say mother submitted on the social worker’s reports. When asked if he had any comments, mother’s counsel told the juvenile court, “[r]egarding [M.M.], mother is submitting. That’s not an issue, PPLA. She is in agreement with that.” With respect to R.B., “[m]other wanted the Court to know that she [was] willing and able to take [him] home.” Mother was disheartened to read in the social worker’s reports “that [R.B.] does not want to return home, [but] she will accept it.” According to counsel, mother did “not have a problem with legal guardianship” for R.B. Her “only” concerns were that R.B. was in a group home where “he can’t stay forever,” “[t]here is no legal guardian right now,” and she did not want him placed in the same foster home as M.M. because of the “distance.” Mother complained M.M.’s caregivers were “always canceling appointments, always canceling visits,” and for that reason she did not want R.B. placed in M.M.’s foster home. “[B]ut she is fine, reluctantly, with what the plan is.” Mother did not submit on the social worker’s additional recommendations or say she agreed with them. In fact, her attorney did not address the remaining recommendations at all, other than to request visitation.

Because mother did not submit on the social worker’s recommendations that the court find mother had not made substantial progress in her case plan or submit on the

social worker's recommended visitation order, we conclude she did not forfeit her claims of error with respect to those orders.

We reach a different conclusion, however, about mother's challenge to the juvenile court's orders that the boys remain in their placements with the permanent plans of PPLA and APPLA and the goals of legal guardianship. As demonstrated, *ante*, mother (through her appointed attorney) very clearly submitted to the social worker's recommendations about placement, plans, and goals for the boys. In fact, mother did more than simply submit on those recommendations. She affirmatively agreed with the plan for M.M., said she was fine with the plan for R.B., and had no problem with the goal of legal guardianship for R.B. Mother expressed some practical concerns about the short-term prospects for the plan for R.B., but she decidedly submitted to it. Therefore, we must conclude she forfeited her ability to challenge the juvenile court's orders adopting those recommendations. (*In re A.A.*, *supra*, 243 Cal.App.4th at p. 1236.)

Last, mother did not submit to the social worker's recommendation that the court terminate reunification services, so we do not find mother forfeited her claims of error about services. However, as we explain, *post*, her submission to the recommended placement, plans, and goals for the boys dooms her claim of error about services.

*B. Substantial Evidence Supports the Juvenile Court's Finding Mother Failed to Make Substantial Progress in Her Case Plan.*

Mother argues the juvenile court erred by finding she had not made substantial progress in her case plan. For the limited purpose of this appeal, we accept DPSS's concession that mother completed most of her case plan. The only issue on appeal is



whether mother benefited from her services, such that returning the boys to her care would not place them at risk of additional physical and/or emotional harm. We conclude the record demonstrates mother had not benefited from 18 months of reunification services, and substantial evidence supports the court's order.

“At an 18-month permanency review hearing, a ‘court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. . . . In making its determination, the court shall review and consider the social worker’s report and recommendations [and] shall consider the efforts or progress, or both, demonstrated by the parent . . . and the extent to which he or she availed himself or herself of services provided . . . .’ (§ 366.22, subd. (a)(1).)” (*N.M. v. Superior Court* (2016) 5 Cal.App.5th 796, 805; see *In re Nolan W.* (2009) 45 Cal.4th 1217, 1235 [“a parent’s failure to progress in treatment constitutes evidence of detriment at the . . . 18-month (§ 366.22, subd. (a)) review hearing[.]”].)

“The standard for showing detriment [to the child] is ‘a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.’ [Citation.] Rather, the risk of detriment must be *substantial*, such that returning a child to parental custody represents some danger to the child’s physical or emotional well-being. [Citations.]” (*In re Yvonne W.*

(2008) 165 Cal.App.4th 1394, 1400.) The juvenile court’s finding that a parent did not make substantial progress in his or her case plan and, therefore, returning the child to their care will create a substantial risk of detriment to the child, is reviewed for substantial evidence. (*Id.* at pp. 1400-1401.) “[W]e consider the evidence favorably to the prevailing party and resolve all conflicts in support of the trial court’s order.

[Citation.] ‘Substantial evidence’ means evidence that is reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case. [Citation.]” (*Id.* at p. 1401.)

The primary reason behind this dependency was the physical abuse of the boys by stepfather and mother’s failure to protect the boys from that abuse. Inter alia, the objectives of mother’s case plan included: “Meet your child(rens)’s physical, emotional, medical, and educational needs”; “Interact with your child(ren) *without physical abuse or harm*”; “Do not use *physical punishment*”; “Remove identified dangers to your child(ren)’s physical health”; “Show that you know age appropriate behavior for your child(ren)”; and “Show that you *accept responsibility for your actions.*” (Italics added.) To achieve those goals, the case plan called for mother to attend general counseling, parenting classes, and substance abuse treatment, and “focus on *insight and self-awareness* into drug history, *physical abuse* and the removal of your children. You will address your need to be protective of your children.” (Italics added.)

From the very beginning, mother adamantly denied that stepfather ever hit the boys or that she ever saw them with a black eye. Mother consistently said the children (including Q.M., who had not been abused and had no reason to falsely report abuse of

her half brothers) had lied to police and social workers. For example, mother said M.M. made up the incident that triggered the detention in the first place because he was angry she was going to send him to Job Corps. Mother said stepfather was “the more lenient” parent, and she would have known if he had ever hit the boys because she had a “close knit family,” and she was almost always in the house. Mother attended some therapy sessions before the contested jurisdiction hearing, during which she was making headway on “acceptance and responsibility.” However, even though she was accountable “for the things that she has done,” she was “not willing to admit to things that are untrue.” As of the hearing, mother’s therapist “indicated mother [had] stopped coming to both parenting [classes] and counseling [sessions].”

The juvenile court sustained the allegations in the amended petitions after hearing compelling and uncontradicted testimony from M.M. about the abuse he and R.B. routinely suffered. But in the very first status review report, the social worker reported mother had only “minimally participated” in her first six months of services; had failed to make herself available to discuss the case plan; and had not participated in drug treatment and testing. Mother had completed a 12-week parenting class and attended individual counseling, but the social worker opined mother had not benefitted from them because she still failed to acknowledge that the boys had been traumatized. Mother inconsistently visited with the boys during that period, and the boys reported they had no interest in further visits because mother still lacked insight into their abuse. Based on mother’s lack of progress, the social worker recommended the juvenile court terminate her services.

The juvenile court found mother had made only “minimal” progress but gave her an additional six months of services.

The second six months of reunification services did not make much of a difference. The social worker reported mother still only minimally participated in her case plan, and her visits with the boys were “minimal and inadequate.” R.B. reported mother spent most of her time during the visits on her phone and barely spoke to him. Considering mother still denied the abuse had ever taken place, it is not surprising that she brought stepfather with her, in direct contravention to the juvenile court’s order. Although mother attended counseling sessions during the reporting period, and she apparently had made some progress toward addressing her responsibility in the physical abuse, the therapist reported mother still had not acknowledged or addressed her substance abuse issues.

Clearly irked by the first therapist’s progress report, mother abruptly switched therapists. The new therapist reported mother appeared to be a loving parent and seemed to understand that physical discipline is abuse. But, later, the therapist admitted to the social worker she had only seen mother three times, and they had not yet discussed the main issue in this case—the physical abuse of the boys. The social worker continued to express concern that mother had not made meaningful progress in or benefited from her case plan and once again recommended the juvenile court terminate services. The court found mother had made “moderate” progress in her case plan and granted her an additional six months of services.

After the case was transferred to the Riverside County Juvenile Court, the social worker reported mother was still only sporadically visiting with the boys. Perhaps because it lacked a complete picture of mother's progress so far, the court found she had made substantial progress in her case plan and continued her services.

According to the 18-month status review report, mother's therapist stated mother had finally made "some acknowledgments" about the allegations of abuse. But, outside the therapy sessions, mother still denied the abuse had ever happened and failed to take responsibility for her part in it. Mother also failed to complete her drug treatment program and was discharged from the program. R.B. visited with mother, but he reported mother had not changed and exhibited wild mood swings. M.M. also reported mother had not changed. When informed the boys no longer wanted to visit with her, mother showed just how little insight she had gained into their abuse by blaming their reluctance to visit on CFS and the medication given to them to treat the emotional results of their abuse. Once more, the social worker assigned to this case opined mother had not benefited from her reunification services and recommended they be terminated.

Prior to the contested 18-month status review hearing, mother submitted a letter from her therapist that stated mother had, finally, taken full responsibility for her actions during her therapy sessions. But, minors' counsel informed the juvenile court that outside the therapeutic setting, mother still denied responsibility for the abuse. In text messages she sent to M.M., mother continued to blame the boys for their removal, especially M.M. An addendum report from the social worker cast additional doubt on the veracity of the therapist's letter. The social worker reported R.B. had refused to

participate in conjoint therapy with mother because he felt the therapist was “rushing through the issues that he and his mother have.” R.B. said he was open to conjoint therapy with a different therapist but, in yet another sign of mother’s lack of insight, she refused to change therapists.

Once more, the social worker opined mother had not benefited from her services because, even after receiving 18 months of reunification services, she still denied the allegations of physical abuse, and she still had not taken responsibility for her actions that resulted in the boys being taken from her in the first place. Finally, the juvenile court adopted that recommendation and found mother had not made substantive progress in her case plan.

This case is similar to *In re Dustin R.* (1997) 54 Cal.App.4th 1131. In that case, the children were removed from the mother because the juvenile court substantiated allegations of physical abuse by the father. (*Id.* at pp 1133-1134.) Among other things, the mother’s reunification plan required her to participate in counseling or therapy “which addresses issues of physical abuse . . . .” (*Id.* at p. 1134.) Before the 18-month review hearing, the social worker reported the mother had substantially complied with her case plan, including attending counseling sessions, but the social worker expressed concern the mother was unable to recognize the father’s problematic behavior and the children’s needs. (*Id.* at p. 1137.) The social worker “believed the parents had not gained any insight from their participation in counseling and parenting classes.” (*Ibid.*) A psychological evaluator had “expressed concern about mother’s inability to perceive anything unusual about her husband’s behavior,” and a family therapist reported mother

“appeared to have a very limited awareness of the needs of their children” and recommended visits “should be supervised by ‘a professional who is aware of appropriate and inappropriate behavior on the part of the parents regarding their children.’” (*Id.* at p. 1141.) At the permanency planning hearing, the juvenile court found the mother made substantial progress in her case plan but had not alleviated the causes of the dependency, so it terminated her reunification services and ordered the boys to remain in long-term foster care. (*Id.* at p. 1138.)

On appeal, the mother argued the juvenile court erred because she had substantially complied with her case plan. The Court of Appeal disagreed. “[C]ompliance with the reunification plan need not be the sole concern of the court, but it must be an indicium of progress toward family preservation [citation].” (*In re Dustin R.*, *supra*, 54 Cal.App.4th at pp. 1139-1140.) “The objectives of the reunification plan clearly related to mother’s understanding and appreciation of the significance of father’s physical abuse and the particular psychological problems her children had as a result of that abuse.” (*Id.* at p. 1141.) The court rejected mother’s suggestion that “mere completion of the technical requirements of the reunification plan . . . is sufficient.” (*Id.* at p. 1141.) “Availing herself of the services provided is one consideration under section 366.22, subdivision (a), but under this statute the court must also consider progress the parent has made towards eliminating the conditions leading to the children’s placement out of the home.” (*In re Dustin R.*, at pp. 1141-1142.) “[S]imply complying with the reunification plan . . . and visiting the children is to be considered by the court; but it is not determinative. The court must also consider the parents’ progress and their

capacity to meet the objectives of the plan; otherwise the reasons for removing the children out-of-home will not have been ameliorated.” (*Id.* at p. 1143.)

As in *In re Dustin R.*, the objectives of mother’s reunification plan in this case “clearly related to mother’s understanding and appreciation of the significance of [stepfather’s] physical abuse and the particular psychological problems her children had as a result of that abuse.” (*In re Dustin R.*, *supra*, 54 Cal.App.4th at p. 1141.) It is undisputed that mother technically complied with her case plan because she completed her parenting classes; she mostly completed her drug treatment program and had tested negative for drugs; and she participated in individual and conjoint therapy. But her technical compliance with the case plan was only part of the equation. (*Id.* at p. 1141.) She was required to also show that completion of those services amounted to something and had alleviated the reasons for the dependency. (*Id.* at pp. 1141-1143.) The record amply supports the conclusion that, despite being offered 18 months of reunification services, mother still denied the boys were abused and demonstrated she had not gained meaningful insight into the psychological effect the abuse had on the boys and on the family.

We recognize the question before us is not whether mother gained as much insight as we (or the juvenile court) might have hoped for. (*In re Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1400.) But we conclude substantial evidence supports the juvenile court’s finding that mother had not made substantial progress in her case plan.

*C. The Juvenile Court Lacked Authority in This Case to Extend Reunification Services Beyond 18 Months.*



Mother contends the juvenile court also erred by terminating her reunification services and by not offering her additional reunification services including continued family therapy. Although the juvenile court expressly ruled it was terminating mother's reunification services with respect to the boys, mother had already received reunification services for the normal statutory maximum of 18 months. As a practical matter, those services were terminated as a matter of law unless the court extended them. Therefore, the issue for us is, should the juvenile court have offered mother an additional six months of services?

Because mother had submitted to the social worker's recommendation about the boys' placement, plan, and goals, and had not challenged the juvenile court's findings that she had received reasonable reunification services, and there was not a reasonable probability that the boys would be returned to mother's care if she did receive an additional six months of reunification services, the court simply lacked the authority to grant mother any additional services, including family therapy.

"As a general rule, when a child is removed from parental custody under the dependency statutes, the juvenile court is required to provide reunification services pursuant to section 361.5 to 'the child and the child's mother and statutorily presumed father.' (§ 361.5, subd. (a).) The purpose of these reunification services is 'to facilitate the return of a dependent child to parental custody.' (*In re Jodi B.* (1991) 227 Cal.App.3d 1322, 1326 . . . , italics omitted; see *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478 . . . [purpose of reunification efforts is to 'eliminate the conditions leading to loss of custody

and facilitate reunification of parent and child’ thereby furthering the ‘goal of preservation of family, whenever possible’].)” (*In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1281.)

“At the outset of a dependency proceeding, the emphasis is on preservation of the family due to the strong fundamental interest parents have in the care, custody, management and companionship of their children, which is recognized as ‘a compelling one, ranked among the most basic of civil rights.’ [Citations.] ‘Likewise, natural children have a fundamental independent interest in belonging to a family unit [citation], and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child. [Citation.] The interests of the parent and the child, therefore, must be balanced.’ [Citation.] Our juvenile court law attempts to accommodate these sometimes competing interests by shifting the emphasis of the proceedings over time from the goal of preserving the family at the outset to that of protecting and promoting the best interests of the child if efforts at reunification produce unsatisfactory results or drag on too long. [Citations.] [¶] In line with these shifting goals, subdivision (a) of section 361.5 contains a series of time limitations on ‘child welfare services’ that may be offered in a dependency proceeding, with a 12-month presumptive period for children age three or older, and an 18-month maximum. (§ 361.5, subd. (a)(1)(A) & (3).)” (*D.T. v. Superior Court* (2015) 241 Cal.App.4th 1017, 1034-1035, fn. omitted.)

The courts have held that, “in rare instances” and under “exceptional circumstances,” a juvenile court has the discretion to continue reunification services

beyond 18 months if the parent has not been provided with reasonable services or was otherwise prevented from participating in reunification services, and the court finds it would be in the best interest of the child to continue services. (*In re N.M.* (2003) 108 Cal.App.4th 852, 855-856, superceded by statute on another ground as stated in *In re T.W.* (2013) 214 Cal.App.4th 1154, 1168; see *In re J.E.* (2016) 3 Cal.App.5th 557, 563-565.)

Section 361.5 is consistent with that body of decisional law. At the permanency review hearing, the juvenile court may order an additional six months of reunification services beyond the normal 18-month maximum, for an absolute maximum of 24 months, “if it is shown . . . the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period.” (§ 361.5, subd. (a)(4)(A).) Before granting an additional six months of reunification services, the court must find (1) the extension of reunification services is in the best interest of the child, and (2) there is a reasonable probability the child will be returned to the parent or guardian during that extended period *or* that reasonable services had not been provided to the parent or guardian. (*Ibid.*)

As discussed, *ante*, mother submitted to and agreed with the social worker’s recommendation that the juvenile court order the boys remain in their placements and adopt PPLA and APPLA as their permanent plans with the goals of legal guardianship. Therefore, it was *not* shown at the 18-month review hearing that the permanent plan for the boys was to return them to mother, and the juvenile court had no authority to order additional services under section 361.5, subdivision (a)(4)(A).

In addition, mother does not challenge the juvenile court's findings that there was no reasonable probability the boys would be returned to mother if additional services were provided and that she had received reasonable reunification services, so we must presume substantial evidence supports those findings. (See *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 808 [“trial court's unchallenged findings are presumed to be correct”]; *PR/JSM Rivara LLC v. Community Redevelopment Agency* (2009) 180 Cal.App.4th 1475, 1486 [“Given that the opening brief does not challenge this factual finding, it is presumed correct on appeal.”].) Therefore, the juvenile court simply could not make the necessary findings to trigger its authority to offer additional services under section 361.5 or under the preexisting case authority.<sup>5</sup>

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<sup>5</sup> In addition, the juvenile court is authorized at the permanency review hearing to provide an additional six months of reunification services, for an absolute maximum of 24 months, to (1) a parent or legal guardian who is making substantial and consistent progress in a court-ordered residential drug treatment program, (2) an underage parent or nonminor dependent parent who is making significant and consistent progress in establishing a safe home for the child, or (3) a parent who has recently been released from incarceration, institutionalization, or from the custody of the United States Department of Homeland Security and who is making significant and consistent progress in establishing a safe home for the child. (§ 366.22, subd. (b); *N.M. v. Superior Court*, *supra*, 5 Cal.App.5th at p. 806.) Mother fits into none of those unique categories.

And as with section 361.5, subdivision (a)(4), services may be extended under section 366.22, up to a maximum of 24 months, *only* if the juvenile court finds (1) the extension of reunification services is in the best interest of the child, and (2) there is a reasonable probability the child will be returned to the parent or guardian during that extended period or that reasonable services had not been provided to the parent or guardian. (§ 366.22, subd. (b); *N.M. v. Superior Court*, *supra*, 5 Cal.App.5th at p. 806.) For the reasons stated in the text, even if mother fit into the limited class of parents and legal guardians who qualify for up to 24 months of services under section 366.22, the juvenile court simply could not make the necessary findings to justify such an order.

Because mother had received 18 months of reasonable reunification services, yet reunification of the boys with her was no longer a realistic goal and the plan was to leave them in their current placement with the goal of legal guardianship, services *designed to foster reunification with mother* would no longer serve their intended purpose. (*In re Jaden E.*, *supra*, 229 Cal.App.4th at p. 1281.) The juvenile court did not err by denying mother more services.

*D. The Court's Visitation Order Was Appropriate.*

Finally, mother argues the juvenile court erred by not mandating the boys participate in visits with her. According to mother, the juvenile court improperly delegated to third persons the ability to decide whether the boys visited with mother. We find no error.

*1. Additional background.*

At the hearing where the juvenile court set a contested 18-month status hearing, mother's counsel told the court R.B. had been attending conjoint therapy and visiting with mother on weekends, but the investigator for minors' counsel told R.B. "he doesn't need to do weekend visits, . . . he doesn't need to do counseling." Counsel said, "mother doesn't understand why he should have a choice. It was court ordered, the weekend visits, and they have been going well, mother says. And the family therapy is also going well, she says. So she would like him to continue the family therapy and continue the weekend visits."

After disputing the therapist's statement in her letter that mother had taken "full responsibility," minors' counsel addressed the issue of R.B.'s visits. "[He] has indicated

that he does not want to go to the home anymore. He does not feel safe there. He feels that he was given certain assurances before he started the weekend visits, and the parents have shown that they are going to continue smoking their marijuana, which is fine, but he was given reassurances that that was no longer going to be the situation.” Minors’ counsel also informed the juvenile court that R.B. “had a promotion just recently from junior high and mother promised that she was going to be there for that, and she never showed up. So [her] actions are speaking louder than words. The boys are adamant that they do not wish to reunify.” In addition, minors’ counsel informed the Riverside County Juvenile Court that the San Bernardino County Juvenile Court had previously ruled stepfather was a nonparty with respect to the boys and was to have no visits with them, so continued authorization for weekend visits in the family home would not be appropriate. Counsel told the court, “when [R.B. is] at home there is absolutely no communication. He’s just ignored. He just basically sits in his room and does nothing.” Finally, counsel disputed the claim that her investigator had told R.B. he could stop participating in visits or conjoint therapy if he no longer wanted to. “That didn’t happen. That’s coming from mother.”

It was in the context of this discussion that the juvenile court indicated how difficult it was to enforce visitation when “the children are older” and unwilling to participate. The court said it was “not involved in the business of forcing and dragging kids here and there to force visitation.” The court left its prior visitation orders in place, and said, “We will see how everyone wants to deal with them.” The court encouraged visits, but said, “to the extent they don’t happen, I’m not sure what I can do about it. But

if they do happen, they need to be unsupervised outside the home.” The court recognized “the problem right now is we have the age of the boys, their feelings, and we have to figure out how to address those issues regarding visitation.”

Mother also asked the court to order R.B. to participate in conjoint therapy. In the discussion that followed, mother's attorney and a representative from R.B.'s group home informed the juvenile court that weekend visits and Friday evening conjoint therapy sessions with R.B. were essentially entwined because of the distance between R.B.'s placement in San Bernardino County and mother's residence in Riverside County, and that it was impractical to transport the boy back and forth solely for conjoint therapy if he refused to stay for weekend visits. The court stated, "To the extent that the parents and the child can have the counseling hours changed so they could be during the daytime, [DPSS] will provide assistance with transportation so that we could at least try continued conjoint counseling . . . , if not visits, on the weekends. I think that would be helpful. So I'll ask [DPSS] to look into changing the hours of counseling so the child can attend and provide transportation assistance."

Finally, during the 18-month review hearing, mother requested continued unsupervised visits. Minors' counsel suggested mother be granted unsupervised visits a minimum of once a month for one hour outside the home. After terminating mother's services, the juvenile court suggested it might leave visits between R.B. and mother "at his request," adding, "[i]f he requests visitation, that's to be set up by the social worker." The court also indicated it would authorize mother to bring Q.M. "so that sibling visitation can occur. That might be one way to get [M.M.] to participate in visits." But after being informed by mother that the week before M.M. had said he wanted to visit, the court quickly changed course, saying, "I think I'm just going to set it for both boys



one time a month at least one hour, . . . unsupervised, with authorization for sibling visitation to take place together. So that would be like a set minimum.”

## 2. *Analysis.*

Mother is correct that a juvenile court may not delegate to a third person the ability to decide whether a child visits with the parent. “Case law consistently holds that the juvenile court cannot delegate the decision whether visitation will occur to any third party, including the child, the social services agency, or the guardian. [Citations.] ‘A visitation order may delegate to a third party the responsibility for managing the details of visits, including their time, place and manner. [Citation.] That said, “the ultimate supervision and control over this discretion must remain with the court . . . .” [Citation.]’ [Citation.] The juvenile court ‘improperly delegate[s] its authority and violate[s] the separation of powers doctrine’ if it ‘delegates the discretion to determine whether any visitation will occur’ to a third party. [Citation.]” (*In re Korbin Z.* (2016) 3 Cal.App.5th 511, 516-517.)

The juvenile court in this case did, in fact, order that mother have visits with the boys a minimum of once a month for one hour even after it had terminated her reunification services. (See § 366.22, subd. (a)(3).) And nothing supports mother’s claim that the court delegated to anyone the authority to decide if those visits took place. Although the court had expressed a healthy skepticism that it could enforce visits under the circumstances of this case, and the court—for a brief moment—contemplated leaving it up to R.B. whether he visited with mother, it ultimately ordered that mother have

unsupervised visits with both boys without delegating to R.B. or to anyone else the power to veto visits.

And we disagree with mother's argument that the juvenile court erred by not mandating that the boys visit with her. Relevant here, the purposes of visitation are to maintain the ties between the parent and child and to provide information relevant to deciding whether the child should be reunited with the parent. (§ 362.1, subd. (a).) Visits must "be as frequent as possible, consistent with the well-being of the child," but under no circumstances may a visitation order jeopardize the child's safety. (*Id.*, subd. (a)(1)(A), (B); see § 366.22, subd. (a)(3) [even after terminating services at a permanency review hearing, juvenile court "shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child"].)

"When a child refuses visitation, it is the parent's burden to request a specific type of enforcement, or a specific change to the visitation order. Absent a request, it is not the court's burden to sua sponte come up with a solution to the intractable problem of a child's steadfast refusal to visit a parent. Trial judges are not mental health experts, nor child behavior experts. As one court noted, '[D]ependency courts "simply do not have the time and resources to constantly fine tune an order in response to the progress or lack thereof in the visitation arrangement, or in reaction to physical or psychological conduct which may threaten the child's well-being."' (*In re Julie M.* [(1999)] 69 Cal.App.4th 41, 51.) Those sorts of changes are better handled, in the first instance, through communication with [the social services agency], and, as needed, through motions to

modify the visitation order. It is the parent's burden to initiate those procedures, not the court's." (*In re Sofia M.* (2018) 24 Cal.App.5th 1038, 1046.)

Although she had previously asked the juvenile court to order R.B. to participate in conjoint therapy, at the contested 18-month review hearing mother did not expressly request the court put any teeth into its visitation order. All she did was request visitation, which the court granted. Because the placement, plans, and goals for the boys were *not* to return them to mother's care, the only purpose those visits would serve would be to maintain familial ties between the boys, their mother, and half sister. The reality is that the juvenile court had very little ability to enforce its visitation orders in a case like this case where the boys, who are older, consistently expressed they did not wish to visit with mother. "The reality in many of these cases is that the parent has irreparably damaged the relationship beyond salvage. This cannot be presumed, of course, and thus courts must, consistent with the child's well-being, order visitation and enforce that order appropriately. But if it turns out, after reasonable efforts have been exhausted, the child simply cannot be persuaded to visit, that, in and of itself, is not a basis for reversal." (*In re Sofia M., supra*, 24 Cal.App.5th at p. 1047.)

III.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER  
Acting P. J.

We concur:

MILLER  
J.

RAPHAEL  
J.